



September 22, 1999

Lieutenant Brad Lancaster
Amarillo Police Department
City of Amarillo
200 E. 3rd Street
Amarillo, Texas 79101-1514

OR99-2662

Dear Lieutenant Lancaster:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 127643.

The City of Amarillo Police Department (the "department") received a request for six specified incident reports. In response to the request, you submit to this office for review the information which you assert is responsive. You contend that the submitted information is excepted from required public disclosure by sections 552.101 and 552.108 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). You have submitted to our office some information which you classify as criminal history record information ("CHRI"). You contend that requestor's request is "tantamount to building a criminal history." However, in this instance, the requestor asks for six identified incident reports, instead of all information compiled on a certain person. We note that a request for a specific offense report does not constitute CHRI and may not be withheld under section 552.101. Under the facts presented, we conclude that the submitted six incident reports may not be withheld as CHRI under section 552.101 of the Government Code.

You also argue that four of the reports, identified as 97-9982, 97-71325, 97-11689, and 97-4811, contain information which implicate an individual's common-law privacy interests. Section 552.101 protects information coming within the common-law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

We believe that two of the submitted incident reports, 97-10703¹ and 97-4811, refer to matters which must be protected under common-law privacy. This office has previously recognized that information might implicate an individual's common-law privacy interests if it relates, for example, to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures or emotional/ mental distress. *See* Open Records Decision No. 370 (1983); *see also* Open Records Decision Nos. 343 (1982), 262 (1980). In Open Records Decision No. 422 (1984), this office concluded that the fact that an individual attempted to commit suicide was a strong indication that the individual suffered from emotional or mental distress, and therefore implicated the individual's common-law privacy interests. We have marked the information in these two incident reports that the department must withhold to protect the privacy interests of an individual. Since you have not raised any other applicable exception for the other three incident reports, 97-9982, 97-71325, and 97-11689, we conclude that these reports may not be withheld.

Finally, you assert that incident reports 99-49598 and 97-10703 are excepted from required disclosure pursuant to section 552.108(a)(2). Section 552.108 of the Government Code, the "law enforcement" exception, provides in part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
 - (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
 - (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation

¹ Although you have not raised common-law privacy for incident report 97-10703, we note that this report contains some information which may be protected by common-law privacy, which in this instance we have addressed under section 552.108 of the Government Code. Gov't Code § 552.352 (distribution of confidential information is a criminal offense). The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. *See generally* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

that did not result in conviction or deferred adjudication.

....

- (c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. This office applies section 552.108(a)(1) when a requested offense report pertains to an ongoing investigation or prosecution. A governmental body claiming section 552.108(a)(2) should demonstrate that the requested information relates to a concluded criminal case that has come to some type of final result other than a conviction or deferred adjudication.²

You contend that incident reports 99-49598 and 97-10703 are excepted from required disclosure pursuant to section 552.108(a)(2). It appears from the face of the documents that incident report number 99-49598, a "stolen vehicle report" filed June 8, 1999, is "inactive" at this time. Incident report number 97-10703, a "disorderly conduct" report, is also in "inactive" status. Based on your representation and our review of these reports, we conclude that, other than front page information, these reports may be withheld pursuant to section 552.108(a)(2).

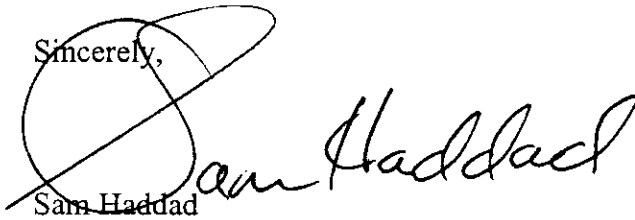
As you are aware, however, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold incident reports 99-49598 and 97-10703 from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination

²This office has interpreted section 552.108(a)(2) to apply to information that relates to a criminal investigation or prosecution that concluded in a result other than a conviction or deferred adjudication. Thus, if the information relates to a pending case, that is, a case which has had no result, section 552.108(a)(2) cannot apply because a pending case has not concluded. Consequently, in the usual case, subsections (a)(1) and (a)(2) cannot simultaneously apply to information relating to the same case. In order to determine the applicability of section 552.108, this office requires accurate, current information about the status of the case to which requested information relates.

regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad

Assistant Attorney General
Open Records Division

SH/ch

Ref: ID# 127643

Encl. Submitted documents

cc: Mr. Byron Roach
6303 Commerce Drive, #500
Irving, Texas 75063
(w/o enclosures)